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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

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9 Rakesh Patel, M.D., and Shital Patel,

No. CV-19-04983-PHX-GMS

10 Plaintiffs,

ORDER

11 v.

12 Medical Diagnostic Imaging Group Limited,
13 et al.,

14 Defendants.

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16 Before the Court is Plaintiffs' Motion for Voluntary Dismissal (Doc. 88). For the
17 following reasons, Plaintiffs' motion is granted.

18 **BACKGROUND**

19 This action, arising out of Plaintiff Rakesh Patel's employment relationship with
20 Defendant Medical Diagnostic Imaging Group Limited ("MDIG"), has been stayed since
21 January 2020 due to MDIG's Chapter 11 bankruptcy proceeding. (Docs. 50, 70.) Plaintiffs
22 have filed a proof of claim with the bankruptcy estate to resolve their claims, and now
23 requests dismissal of the action without prejudice. (Doc. 88 at 1-2.) Defendants Barry
24 and Kimberly Sadegi, Aaron and Stacie Wittenberg, Peter and Deborah Steinberg, and
25 Abhijit and Neepa Shah ("Defendants") do not object to dismissal, but request that the
26 Court dismiss Plaintiffs' claims with prejudice. (Doc. 90 at 1.)

27 **DISCUSSION**

28 Federal Rule of Civil Procedure 41(a)(2) "vests the district court with discretion to

1 dismiss an action at the plaintiff's instance," *Hargis v. Foster*, 312 F.3d 404, 412 (9th Cir.
 2 2002), "on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2); *see also*
 3 *Westlands Water Dist. v. United States*, 100 F.3d 94, 96 (9th Cir. 1996); *Zanowick v. Baxter*
 4 *Healthcare Corp.*, 850 F.3d 1090, 1093 (9th Cir. 2017). As part of the Court's power to
 5 set the terms of dismissal, the Court retains the discretion to convert a plaintiff's request
 6 for dismissal without prejudice into a dismissal with prejudice. *Hargis*, 312 F.3d at 412;
 7 *see also* 9 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure*
 8 § 2367 (4th ed. 2022) ("If the plaintiff either moves for dismissal without prejudice or fails
 9 to specify whether the request is for dismissal with or without prejudice, the matter is left
 10 to the court's discretion."). The Court "may order the dismissal to be with prejudice where
 11 it would be inequitable or prejudicial to defendant to allow plaintiff to refile the action."
 12 *Burnette v. Godshall*, 828 F. Supp. 1439, 1443 (N.D. Cal. 1993)

13 Defendants do not object to dismissal of the action. Therefore, the only question is
 14 whether dismissal should be with or without prejudice. "Courts consider the following
 15 factors in determining whether to dismiss with or without prejudice: (1) 'the defendant's
 16 effort and expense involved in preparing for trial'; (2) 'excessive delay and lack of
 17 diligence on the part of the plaintiff in prosecuting the action'; and (3) 'insufficient
 18 explanation of the need to take a dismissal.'" *ThermoLife Int'l LLC v. Neogenis Labs Inc.*,
 19 No. CV-18-2980-PHX-DWL, 2021 WL 5084280, at *4 (D. Ariz. Nov. 1, 2021) (quoting
 20 *Burnette* 828 F. Supp. at 1443–44). Plaintiffs request dismissal without prejudice because
 21 the bankruptcy proceeding remains ongoing, and they are uncertain that they will be made
 22 whole by that process. (Doc. 88 at 2.) Defendants, by contrast, argue that the fact that the
 23 bankruptcy court has determined that Plaintiffs will receive funds as part of the
 24 reorganization plan warrants a dismissal with prejudice. (Doc. 90 at 2.)

25 The first two factors weigh in favor of dismissal without prejudice. This action has
 26 been stayed for two years due to the parallel bankruptcy proceedings. (Doc. 70 at 1.) Since
 27 January 10, 2020, Defendants have only been required to periodically file joint status
 28 reports with the Court. Consequently, the effort and expense incurred by Defendants is

1 minimal. Likewise, while the bankruptcy stay has caused delay in this action, the delay is
 2 not attributable to Plaintiffs' lack of diligence.

3 The third factor is a closer call but also weighs in favor of dismissal without
 4 prejudice. Plaintiffs' concern about the uncertainty of the bankruptcy process is not
 5 without merit. The claims allowance process remains ongoing in the bankruptcy court, and
 6 the creditor trust has recently moved to extend the claim objection deadline through at least
 7 September 7, 2022. *See* Sixth Motion to Extend Time to Object to Claims, *In re Med.*
 8 *Diagnostic Imaging Grp., Ltd.*, No. 19-bk-15722-DPC (Bankr. D. Ariz. Jun. 2, 2022), ECF
 9 No. 737. Moreover, while Plaintiffs' claim in the bankruptcy court is premised on several
 10 grounds, including for back wages and benefits in a now-terminated pension plan, *see* Proof
 11 of Claim, *In re Med. Diagnostic Imaging Grp., Ltd.*, No. 19-bk-15722-DPC (Bankr. D.
 12 Ariz. Jan. 13, 2020), Claim 4-1, the creditor trust has only objected to the portion of
 13 Plaintiffs' claim pertaining to the benefit plan. *See* Order Granting Omnibus Objection to
 14 Claims Filed by Employees Relating to Benefit Plans, *In re Med. Diagnostic Imaging Grp.,*
 15 *Ltd.*, No. 19-bk-15722-DPC (Bankr. D. Ariz. Nov. 19, 2021), ECF No. 695. As the creditor
 16 trust has expressly reserved its rights to raise additional objections against Plaintiffs' claim,
 17 the Court agrees that ongoing bankruptcy proceeding makes dismissal with prejudice
 18 inappropriate. *See* Omnibus Objection to Claims Filed by Employees Relating to Benefit
 19 Plans ¶ 14, *In re Med. Diagnostic Imaging Grp., Ltd.*, No. 19-bk-15722-DPC (Bankr. D.
 20 Ariz. Oct. 7, 2021), ECF No. 662 ("[T]he Creditor Trust reserves the right to amend,
 21 modify, or supplement this objection or file a new objection asserting additional objections
 22 to any claim asserted by a claimant (including claimants who are subject to this motion).").

23 CONCLUSION

24 As all three factors weigh in favor of dismissal without prejudice, the Court will
 25 permit Plaintiffs to dismiss this action without prejudice.

26 **IT IS ORDERED** that Plaintiffs' Motion for Voluntary Dismissal (Doc. 88) is
 27 **GRANTED**.

28 **IT IS FURTHER ORDERED** dismissing this action without prejudice. The Clerk

1 of Court is directed to terminate this action.

2 **IT IS FURTHER ORDERED** that all parties are to bear their own costs and
3 attorneys' fees.

4 Dated this 3rd day of June, 2022.

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7 G. Murray Snow
8 Chief United States District Judge

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